

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: Washington County Hospital & Clinics Washington, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2008-AQ- 36
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TO: Don Patterson, CEO
Washington County Hospital & Clinics
400 East Polk
Washington, Iowa 52353

Rick Distelhorst, Director of Support Services
Washington County Hospital & Clinics
400 East Polk
Washington, Iowa 52353

I. SUMMARY

This administrative consent order is entered into between Washington County Hospital & Clinics (hospital) and the Iowa Department of Natural Resources (DNR) for the purpose of resolving asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) violations for a demolition project at the Washington County Hospital in Washington, Iowa.

Any questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Marion Burnside
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8443

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

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II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1), which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated and permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, the DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

The hospital neither admits nor denies the Statement of Facts and enters into this administrative consent order for settlement purposes only.

1. The hospital initiated a project that included the demolition of an older portion of the hospital and the construction of a new section of the hospital. The hospital hired Carl A. Nelson & Company as the construction manager for the demolition and construction project. Washington County Hospital hired subcontractor DeLong Construction, Inc., for the demolition portion of the project. Pro Environmental Abatement, Inc. was hired by the hospital to remove some but not all of the asbestos containing floor tile.

2. On July 17, 2007, DNR received an asbestos NESHAP notification from Pro Environmental Abatement, Inc. for the removal of approximately 795 linear feet of asbestos containing pipe wrap and 2,900 square feet of asbestos containing transite, floor tile, and mastic from the hospital. The removal was scheduled to be conducted between July 30, 2007 and August 17, 2007.

3. In late August 2007, DNR received an inquiry as to the demolition project at the hospital. On September 5, 2007, Marion Burnside, asbestos NESHAP coordinator for the DNR, conducted an inspection at the hospital based on the inquiry. When Mr. Burnside arrived at the hospital for the inspection, an older part of the hospital had been demolished. Rick Distelhorst from the hospital, Jim Zieglowsky from DeLong Construction, Inc., and Mike Harris of Carl A. Nelson & Company were on premises during the inspection. Mr. Burnside asked if an asbestos NESHAP notification had been submitted. None of the parties present indicated that a notification had been submitted for the demolition. The concrete pad still had floor tile on it and the pad along with the floor tile was being broken up. Mr. Burnside collected a sample of the floor tile for asbestos content analysis. Mr. Burnside inquired as to whether any inspections or sampling had occurred. The parties indicated that some of the floor tiles had been tested for asbestos, but the results were negative.

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4. On September 6, 2007, the DNR submitted the sample collected during the September 5, 2007 investigation to the University of Iowa Hygienic Laboratory for asbestos content analysis. On September 13, 2007, the DNR received the analytical results of the sample. The sample contained a regulated amount of asbestos – 10% chrysotile asbestos.

5. On October 25, 2007, DNR issued a Notice of Violation letter to the hospital for several asbestos NESHAP violations. The letter cited the following violations: failure to conduct a thorough asbestos inspection; failure to submit a demolition notification; failure to keep asbestos containing material adequately wet; failure to have a trained supervisor on site; and failure to properly dispose of the asbestos containing waste. Notice of Violation letters with the same violations were also sent to DeLong Construction, Inc., and Carl A. Nelson & Company.

6. The hospital has previous knowledge of the asbestos NESHAP regulations and has been cited in the past for similar violations as those cited in this administrative consent order. On May 22, 2006, the hospital was issued a Notice of Violation letter for similar violations in connection with a demolition and renovation project on the hospital's premises.

7. "On June 30, 2008, representatives of the hospital and the DNR met to discuss the proposed administrative consent order and the alleged violations. The parties discussed the letter from counsel for the hospital to Kelli Book dated May 15, 2008, and the enclosures and exchanged a significant amount of additional information regarding facts which surround the May 22, 2006, and the October 25, 2007, Notices of Violation. As discussed at that meeting, the hospital employed a number of outside experts in an effort to obtain compliance with applicable statutes and regulations. Those experts had collected their own samples in the area where Mr. Burnside found asbestos containing material. The parties discussed the fact that the hospital's samples did not indicate the presence of asbestos material."

IV. CONCLUSIONS OF LAW

The hospital neither admits nor denies the Conclusions of Law and enters into this administrative consent order for settlement purposes only.

1. Iowa Code section 455B.133 provides for the Environmental Protection Commission (Commission) to establish rules governing the quality of air and emission standards. Pursuant to Iowa Code section 455B.133, 567 IAC 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the asbestos NESIAP, found at 40 CFR part 61, subpart M.

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renovation activity shall thoroughly inspect a regulated facility for the presence of asbestos prior to commencement of demolition or renovation. Mr. Burnside had been informed that testing had been conducted on the floor tile and no asbestos was present. Mr. Burnside collected a sample of the floor tile on September 5, 2007 and the results of the test indicated the presence of regulated asbestos. The presence of regulated asbestos indicates that a thorough inspection had not been completed. The above facts indicate a violation of this provision

3. 40 CFR section 61.145(b) states that the owner or operator of a demolition or renovation shall submit a complete and timely notification prior to the commencement of the demolition or renovation operations. The specific requirements for this notification are contained in the subsection. Proper and timely notification was not given prior to the demolition of portions of the hospital. The above facts indicate a violation of this provision.

4. 40 CFR section 61.145(c) details the procedures for asbestos emission control and states that each owner or operator to whom the provisions apply shall comply with the procedures. As the owner for the project, the hospital is liable for the actions of its general contractor and subcontractor. The facts in this case indicate that the hospital was not in compliance with these provisions when the demolition project occurred.

5. 40 CFR section 61.145(c)(1) states that the owner or operator of a demolition or renovation shall remove all regulated asbestos containing material from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material. As the owner for the project, the hospital is liable for the actions of its construction manager and subcontractor. The floor tile was not removed prior to DeLong Construction, Inc. demolishing the building. The above facts indicate a violation of this provision.

6. 40 CFR section 61.145(c)(3) states when regulated asbestos containing material is being stripped from a facility component while it remains in place in the facility, the regulated asbestos containing material must be adequately wet at the time the stripping occurs. Water was not being used as the floor tile was being subject to sanding, grinding and abrading.

7. 40 CFR 61.145(c)(6)(i) provides that all regulated asbestos containing material, including material that has been removed or stripped shall be adequately wet and shall remain wet until collected and contained. As the owner for the project, the hospital is liable for the actions of its construction manager and subcontractor. The facts in this case indicate that the construction manager, subcontractor, and the hospital were not in compliance with this provision when the asbestos removal projects occurred. The floor tile that had been subjected to sanding, grinding, and abrading was dry. The above facts indicate a violation of this provision.

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8. 40 CFR 61.145(c)(8) provides that effective one year after promulgation of this regulation, no regulated asbestos containing material shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by this section unless at least one on-site representative, such as a foreman or management level person or other authorized representative, trained in the provisions of this regulation and the means of complying with them, is present. The facts in this case indicate there was not a trained supervisor on site when the floor tile was disturbed during the demolition. The above facts indicate noncompliance with this provision.

9. 40 CFR 61.150 contains standards for asbestos waste disposal for demolition and renovation operations. Specifically, 40 CFR 61.150(a)(1)(iii) provides that all asbestos containing waste materials, while wet, shall be sealed in leak-tight containers or wrapping. During an inspection on September 5, 2007, Mr. Burnside found dry asbestos containing material. The above facts indicate noncompliance with this provision.

V. ORDER

THEREFORE, the DNR orders and the hospital agrees to do the following:

1. The hospital shall pay a penalty of \$5,000.00. \$1,000.00 of the penalty shall be paid to the DNR within 30 days of the date the Director signs this administrative consent order. In lieu of payment of the remaining \$4,000.00, the hospital shall:

Conduct a Supplemental Environmental Project (SEP). The SEP shall consist of a payment to the Washington County Conservation Board.

The hospital shall make a payment of \$4,000.00 to the Washington County Conservation Board within 30 days of the date the Director signs this administrative consent order. Once the payment is made, the hospital shall submit a receipt of payment to Kelli Book, attorney for the DNR.

VI. PENALTY

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for each of the air quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of

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addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The administrative penalty assessed by this administrative consent order is \$5,000.00. The administrative penalty is determined as follows:

- a. Economic Benefit. Failure to follow the proper asbestos NESHAP regulations for asbestos removal and disposal, including but not limited to notification and inspection requirements, allowed the hospital to save time and money. For this reason, a conservative estimate of \$500.00 is being assessed for this factor.
- b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has determined at this time the most equitable and efficient means of resolving the matter is through an administrative consent order. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to follow proper procedures to properly remove and dispose of the regulated asbestos containing material may create an environmental hazard to the workers and general public through the likely release of asbestos fibers. The hospital received a prior Notice of Violation dated May 22, 2006, as a result of a contractor failing to find and to remove asbestos which surrounded a valve. For these reasons, \$3,000.00 is being assessed for this factor.
- c. Culpability. The hospital has a duty to remain knowledgeable of the DNR's requirements, including requirements of the federal asbestos NESIAP regulations. The hospital is responsible for the actions of its construction manager and subcontractors. The hospital has prior knowledge of the asbestos regulations in that it has been cited for similar violations in the past. For these reasons, \$1,500.00 is assessed for this factor.

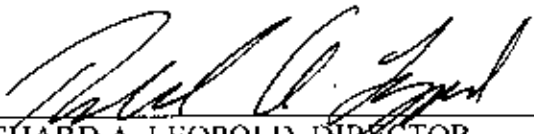
VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly by and with the consent of the hospital. For that reason, the hospital waives the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B. 191.

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RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 24 day of
Sept., 2008



Washington County Hospital & Clinics

Dated this 15 day of
Sept, 2008.

Barb Stock (No asbestos file number); Kelli Book; Marion Burnside; EPA; VII.C.4

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